



March 24, 2009

ENGROSSED SENATE BILL No. 533

DIGEST OF SB 533 (Updated March 24, 2009 9:30 am - DI 96)

Citations Affected: IC 22-8; noncode.

Synopsis: IOSHA and labor administrative matters. Allows the department of labor (department) to collect a penalty assessment assessed under the Indiana occupational safety and health act (IOSHA) by obtaining a judgment lien against an employer's real or personal property or levying upon an employer's property held by a financial institution. Urges the legislative council to assign to the pension management oversight commission the study of certain wage payment issues.

Effective: July 1, 2009.

Buck, Boots, Tallian

(HOUSE SPONSORS — KERSEY, LEONARD, NIEZGODSKI)

January 15, 2009, read first time and referred to Committee on Pensions and Labor.
February 19, 2009, amended, reported favorably — Do Pass.
February 23, 2009, read second time, ordered engrossed. Engrossed.
February 24, 2009, read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

March 3, 2009, read first time and referred to Committee on Labor and Employment.
March 24, 2009, reported — Do Pass.

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ES 533—LS 7563/DI 102+



March 24, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 533

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-8-1.1-35.6 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 35.6. (a) A safety order,
3 penalty assessment, or notice of failure to correct violation which has
4 become final, either through lack of any contest under section 28.1 of
5 this chapter, or after final action by the board, or after judicial review,
6 shall be enforced by the commissioner **under this section or section**
7 **35.7 of this chapter. The remedies provided in this chapter are**
8 **cumulative and are in addition to any other remedy available to the**
9 **commissioner. The commissioner's decision to pursue one (1) of the**
10 **remedies does not preclude the subsequent or corresponding use of**
11 **one (1) or more of the other remedies available to the**
12 **commissioner.**

13 (b) If an employer fails to comply, the commissioner ~~shall~~ **may** refer
14 the matter to the attorney general, who shall promptly institute
15 proceedings under IC 4-21.5-6 to enforce the safety order, penalty
16 assessment, or notice of failure to correct violation.

17 SECTION 2. IC 22-8-1.1-35.7 IS ADDED TO THE INDIANA

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CODE AS A NEW SECTION TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2009]: **Sec. 35.7. (a) If an employer fails to pay a penalty assessed under this chapter within ten (10) calendar days of the date that the assessment is final under section 35.6 of this chapter, the commissioner or the commissioner's representative may file with the circuit court clerk of any county in which the employer owns any interest in property, real or personal, tangible or intangible, a warrant for the amount of the assessment and interest, if applicable. The commissioner or the commissioner's representative may also send the warrant to the sheriff of any county in which the employer owns real or personal property and direct the sheriff to file the warrant with the circuit court clerk.**

(b) When the circuit court clerk receives the warrant from the commissioner, the commissioner's representative, or the sheriff, the clerk shall record the warrant by making an entry in the judgment debtor's column of the judgment record listing the following:

- (1) The name of the employer stated in the warrant.**
- (2) The amount of the warrant.**
- (3) The date the warrant was filed with the clerk.**

(c) When the entry is made, the total amount of the warrant becomes a judgment against the employer. The judgment creates a lien in favor of the state that attaches to all the employer's interest in any real or personal property in the county.

(d) At least thirty (30) calendar days before the date on which the commissioner intends to file a warrant as provided by subsection (a) in order to impose a lien on real or personal property, the commissioner or the commissioner's representative must send a written notice:

- (1) to the owner of the real or personal property that would be subject to the lien; or**
- (2) if the owner of record cannot be identified, to the tenant or other person having control of the real or personal property; of the date on which the commissioner or the commissioner's representative intends to file the warrant in order to impose a lien on the real or personal property. The commissioner or the commissioner's representative shall provide the circuit court clerk of the county in which the real or personal property that would be subject to the lien is located with a copy of the written notice described in this subsection.**

(e) A judgment obtained under subsection (c) is valid for ten

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(10) years from the date the judgement is filed.

(f) A judgment obtained under subsection (c) shall be released by the commissioner:

(1) after the judgment, including all accrued interest to the date of payment, has been fully satisfied; or

(2) if the commissioner determines that the assessment or the issuance of the warrant was in error.

(g) If the commissioner determines that the filing of a warrant was in error, the commissioner or the commissioner's representative shall mail a release of the judgment to the employer and the circuit court clerk of each county where the warrant was filed. The commissioner or the commissioner's representative shall mail the release as soon as possible but not later than seven (7) calendar days after:

(1) the determination by the commissioner that the filing of the warrant was in error; and

(2) the receipt of information by the commissioner or the commissioner's representative that the judgment has been recorded under subsection (b).

(h) A release issued under subsection (g) must state that the filing of the warrant was in error.

(i) After a warrant becomes a judgment under subsection (b), the commissioner may levy upon the property of the employer that is held by a financial institution (as defined in IC 5-13-4-10) by sending a claim to the financial institution. Upon receipt of a claim under this subsection, the financial institution shall surrender to the commissioner or the commissioner's representative the employer's property. If the employer's property exceeds the amount owed to the state by the employer, the financial institution shall surrender the employer's property in a amount equal to the amount owed. After receiving the commissioner's notice of levy, the financial institution is required to place a sixty (60) day hold on or restriction on the withdrawal of funds the employer has on deposit or subsequently deposits, in an amount not to exceed the amount owed.

SECTION 3. [EFFECTIVE JULY 1, 2009] (a) As used in this SECTION, "commission" refers to the pension management oversight commission established by IC 2-5-12-1.

(b) The general assembly urges the legislative council to assign to the commission the study of whether an individual who has been terminated from employment must file a wage claim with the department of labor before filing a civil lawsuit seeking recovery

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1 of unpaid wages under IC 22-2-5-2.

2 (c) If the commission is assigned the topic described in
3 subsection (b), the commission shall issue a final report to the
4 legislative council containing the commission's findings and
5 recommendations concerning the topic, including any
6 recommended legislation, not later than November 1, 2009.

7 (d) This SECTION expires June 30, 2010.

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COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 533, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17.

Delete pages 2 through 3.

Page 4, delete lines 1 through 30.

Page 4, line 37, after "35.7" delete ", 35.8, or 35.9".

Page 5, line 8, after "(10)" insert "**calendar**".

Page 5, line 12, delete "real or personal" and insert "**any interest in**".

Page 5, line 12, after "property" insert ", **real or personal, tangible or intangible**".

Page 5, line 13, after "assessment" delete "," and insert "**and**".

Page 5, line 13, delete "penalties, collection fee, sheriff's costs,".

Page 5, line 14, delete "and clerk's costs,".

Page 5, line 31, after "(30)" insert "**calendar**".

Page 5, line 33, after "real" insert "**or personal**".

Page 5, line 35, after "real" insert "**or personal**".

Page 5, line 38, after "real" insert "**or personal**".

Page 5, line 41, after "real" insert "**or personal**".

Page 6, line 1, after "real" insert "**or personal**".

Page 6, delete lines 3 through 36.

Page 6, line 37, delete "(h)" and insert "**(e)**".

Page 6, line 39, delete "(i)" and insert "**(f)**".

Page 6, line 39, delete "may" and insert "**shall**".

Page 7, line 3, delete "(j)" and insert "**(g)**".

Page 7, line 8, after "(7)" insert "**calendar**".

Page 7, delete lines 15 through 19.

Page 7, line 20, delete "(l)" and insert "**(h)**".

Page 7, line 20, delete "(j) or (k)" and insert "**(g)**".

Page 7, line 22, delete "(m)" and insert "**(i)**".

Page 7, delete lines 36 through 42, begin a new paragraph and insert:

"SECTION 3. [EFFECTIVE JULY 1, 2009] (a) **As used in this SECTION, "commission" refers to the pension management oversight commission established by IC 2-5-12-1.**

(b) **The general assembly urges the legislative council to assign to the commission the study of whether an individual who has been terminated from employment must file a wage claim with the**

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department of labor before filing a civil lawsuit seeking recovery of unpaid wages under IC 22-2-5-2.

(c) If the commission is assigned the topic described in subsection (b), the commission shall issue a final report to the legislative council containing the commission's findings and recommendations concerning the topic, including any recommended legislation, not later than November 1, 2009.

(d) This SECTION expires June 30, 2010."

Delete pages 8 through 10.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 533 as introduced.)

KRUSE, Chairperson

Committee Vote: Yeas 9, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred Senate Bill 533, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

NIEZGODSKI, Chair

Committee Vote: yeas 12, nays 0.

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